

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

**ANTHONY BROWN,**

**Plaintiff,**

**v.**

**Civil Action No. 5:24-cv-00152  
Hon. Frank W. Volk, Judge**

**BETSY JIVIDEN, et al.,**

**Defendants.**

**DEFENDANT JUSTIN MULLINS' MOTION TO DISMISS  
PLAINTIFF'S FIRST AMENDED COMPLAINT**

**NOW COMES** Defendant Justin Mullins ("C.O. Mullins"), by counsel, Natalie C. Schaefer, Kimberly M. Bandy, and Shannon M. Rogers, and the law firm of Shuman McCuskey Slicer PLLC, and requests that Plaintiff's First Amended Complaint be dismissed against him pursuant to Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

Plaintiff's claims against C.O. Mullins were filed outside the applicable statutes of limitations, and his Amended Complaint does not relate back to the initial Complaint. Plaintiff's initial Complaint was filed on March 26, 2024, just as the applicable two-year statute of limitations was expiring. (ECF No. 1). Correctional Officer Mullins was not identified as a Defendant in the initial Complaint. On May 9, 2024, Plaintiff filed his First Amended Complaint which identified C.O. Mullins for the first time. (ECF No. 23). The Amended Complaint is untimely and should be dismissed.

Additionally, pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), the Plaintiff failed to exhaust all administrative remedies, thereby barring all claims. Plaintiff failed to

satisfy the requirements set forth by WVDCR policy and failed to exhaust all administrative remedies related to the assault on March 26, 2022.

Moreover, the Amended Complaint fails to allege any plausible claims against C.O. Mullins because it contains no factual support for any claim against C.O. Mullins.

Finally, C.O. Mullins is entitled to qualified immunity with respect to the claims of constitutional violations, and under West Virginia law with respect to the negligence claims. Correctional Officer Mullins submits his Memorandum of Law contemporaneously with this Motion in further support of the relief requested.

**WHEREFORE**, C.O. Mullins requests that his Motion to Dismiss be granted, that the Amended Complaint be dismissed against him, with prejudice, and for such other and further relief as the Court may direct.

**JUSTIN MULLINS**  
**by counsel,**

/s/ Kimberly M. Bandy  
Natalie C. Schaefer, Esq. (WVSB #9103)  
Kimberly M. Bandy, Esq. (WVSB #10081)  
Shannon R. Rogers, Esq. (WVSB #13920)  
Shuman McCuskey Slicer PLLC  
1411 Virginia Street, East, Suite 200  
Post Office Box 3953  
Charleston, WV 25339-3953  
(304) 345-1400; Fax: (304) 343-1826  
nschaefer@shumanlaw.com  
kbandy@shumanlaw.com  
srogers@shumanlaw.com

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

**ANTHONY BROWN,**

**Plaintiff,**

**v.**

**Civil Action No. 5:24-cv-00152  
Hon. Frank W. Volk, Judge**

**BETSY JIVIDEN, et al.,**

**Defendants.**

**CERTIFICATE OF SERVICE**

The undersigned, counsel for Justin Mullins, hereby certifies that on this 26<sup>th</sup> day of August, 2024, the foregoing *Defendant Justin Mullins' Motion to Dismiss Plaintiff's First Amended Complaint* was electronically filed with the Clerk of the Court using the Case Management/Electronic Case Files (CM/ECF) system, which will send notification of such filing to current CM/ECF participants.

/s/ Kimberly M. Bandy

Natalie C. Schaefer, Esq. (WVSB #9103)  
Kimberly M. Bandy, Esq. (WVSB #10081)  
Shannon R. Rogers, Esq. (WVSB #13920)  
Shuman McCuskey Slicer PLLC  
1411 Virginia Street, East, Suite 200  
Post Office Box 3953  
Charleston, WV 25339-3953  
(304) 345-1400; Fax: (304) 343-1826  
nschaefer@shumanlaw.com  
kbandy@shumanlaw.com  
srogers@shumanlaw.com